

RALPH BAZE SUMMARY OF CASE

FACTS AT TRIAL

Ralph Baze was convicted and sentenced to death in the Rowan Circuit Court for the double murder of two Powell County Sheriff's officers, Sheriff Steve Bennett and Deputy Arthur Briscoe. The facts at trial established that Baze shot each of the officers three times in the back with an SKS assault rifle at a time when the officers were attempting to serve five felony fugitive warrants from Ohio on him.

Baze killed Sheriff Bennett first by shooting him three times in the back from the cover of a large stump and brush pile near his secluded cabin. Baze then turned his attention toward Deputy Briscoe. Baze pinned Deputy Briscoe down with the semi-automatic rifle and the officer crouched down and returned fire from across the hood of the police cruiser. Deputy Briscoe fired two full clips from his 9 mm pistol as Baze was walking towards him firing from his 35 round banana clip. With his weapon empty, Deputy Briscoe turned and tried to run away. Before Deputy Briscoe could run ten feet, Baze shot him in the back twice. Baze pursued the officer, stood over him and fired his rifle into the back of the Deputy Sheriff's head.

Baze told police after his arrest, "I shot him in the back of the head. I understand I was killing the man. There was no doubt in my mind." Later, he voluntarily admitted, "You tell them that you have got the right man. I'm the one that killed them son of a bitches."

The trial lasted three weeks, from November 29, 1993 until December 20, 1993. Baze admitted that he had shot the officers but said it was done in self-defense and under

the influence of extreme emotional disturbance. The jury subsequently found Baze guilty of both murders and recommended a sentence of death.

See Baze v. Commonwealth, 965 S.W.2d 817, 819-820 (Ky. 1997).

PROCEDURAL HISTORY

- Convictions upheld on direct appeal to Kentucky Supreme Court on March 27, 1997
- Petition for writ of certiorari denied by United States Supreme Court on April 20, 1998
- Denial of post-conviction relief by Kentucky Supreme Court on April 20, 2000
- Petition for writ of certiorari denied by United States Supreme Court on February 2001
- Habeas corpus denied September 27, 2002 by United States District Court, Eastern District of Kentucky
- Denial of habeas corpus affirmed by Sixth Circuit Court of Appeals June 9, 2004
- Petition for writ of certiorari denied by United States Supreme Court March 21, 2005
- Denial of post-conviction relief by Kentucky Supreme Court May 18, 2006
- Petition for writ of certiorari denied March 26, 2007

EXTRANEOUS LITIGATION PENDING

The summary above outlines the history of Baze's trial and subsequent direct appeals. His defense team has also filed on his behalf a series of lawsuits challenging the legality of Kentucky's procedure for carrying out capital punishment. In the first of these, Baze claims that Kentucky's lethal injection protocol violates the constitutional prohibition against cruel and unusual punishment. This was rejected by the Kentucky Supreme Court in a unanimous opinion. Baze filed a petition for rehearing which the Kentucky Supreme Court denied. On July 11, 2007, Baze filed a petition for writ of certiorari to the United States Supreme Court. Attorneys for Appellees are currently preparing their response that is due August 20, 2007.

Baze also moved to intervene in a federal civil suit initiated by Brian Keith Moore also challenging the constitutionality of Kentucky's lethal injection protocol. Judge Caldwell has not ruled on this motion, and a motion to dismiss this action based on the *Rooker-Feldman* doctrine is pending. Briefs were also filed on the issue of whether Baze moved to intervene prior to his statute of limitations running. Judge Caldwell has yet to rule on this issue. The Governor is a named defendant in this action.

Additionally, Baze has appealed the Franklin Circuit Court's denial of his CR 60.02 motion to the Kentucky Supreme Court. In this motion, Baze argued that an expert witness in the underlying trial made misrepresentations to the Court and Baze further moved to depose the members of Kentucky's execution team. Baze filed his appellate brief with the Kentucky Supreme Court on March 7, 2007. Attorneys for Appellees Rees, Haeberlin and Fletcher filed their response on July 13th, 2007.

Baze also filed an original action in Franklin Circuit Court arguing that the Department of Corrections is required to promulgate its lethal injection protocol by regulation. The Department of Corrections was successful in arguing that they weren't required to do so in Franklin Circuit Court. Baze appealed the decision to the Kentucky Supreme Court. Briefs have been filed and the case is currently pending.

On May 22, 2007, Baze filed another action in the United States District Court for the Eastern District of Kentucky, alleging that Kentucky's lethal injection procedures violate the Federal Controlled Substances Act and the Federal Food, Drug and Cosmetics Act. On June 6, 2007, Judge Caldwell entered a Show Cause Order directing the Plaintiffs to show cause why their action should not be dismissed on the basis of lack of jurisdiction, since neither the CSA nor the FDCA provide any private right of

enforcement. The Plaintiffs filed their Response to the Show Cause Order on July 9th, 2007. Defendants Rees, Simpson and Haas filed their Answer on July 24, 2007. The Defendants reply memorandum to the Plaintiff's response to the Show Cause Order is due August 15, 2007.

TRADITIONAL PROCEDURE FOR ISSUANCE OF DEATH WARRANTS

Because the Office of the Attorney General (OAG) handles criminal appeals in capital cases, it is traditionally the OAG which requests a death warrant from the Governor. The OAG takes the position that a convicted murderer is no longer entitled to a stay as a matter of right once the Sixth Circuit Court of Appeals has denied the murderer's federal habeas petition.

Traditionally, the OAG sends a letter to the Governor requesting the death warrant, and tenders with the letter a warrant for the Governor to sign. The Department of Public Advocacy (DPA) is copied on this letter and the Governor's Office allows DPA three (3) calendar days (not business days) to respond to the OAG's request. DPA's response has traditionally been limited to three (3) pages in length. On the third calendar day, the Governor's Office is free to sign the warrant. *See Hodge v. Com.*, 116 S.W.3d 463 (Ky. 2003) (upholding the traditional procedure by which a death warrant is requested and issued; Court noted that KRS 431.240 empowers the Governor to set an execution date for a death sentence and stated that. Pursuant to KRS 15.020 and KRS 15.700, the Attorney General is the chief law officer of the Commonwealth and has the authority, and even the duty, to advise the Governor when, in his opinion, litigation for a death sentence has concluded and it is appropriate for the Governor to set an execution date.)

Once the death warrant is signed by the Governor, the Department of Corrections (DOC) immediately initiates Kentucky's lethal injection protocol, a copy of which has been tendered to the Governor's General Counsel.